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VIA FEDERAL EXPRESS

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: Petition for Rulemaking to Address Excessive Access Fees in the Options Markets

Dear Ms. Morris:

Citadel Investment Group L.L.C. ("Citadel") urges the Securities and Exchange Commission to address distortions in the options markets caused by the excessive fees that may be charged by options exchanges using maker-taker pricing. Specifically, Citadel petitions the Commission to institute a rulemaking proceeding to limit the fees that options exchanges may charge non-members to obtain access to quotations to $.20 per contract.[1] The text of a draft rule designed to implement such a fee cap is attached as Exhibit A. Limiting the fees that options exchanges may charge to obtain access to their quotations ("Taker Fees") would ensure the effectiveness of quotations in the options markets and address many of the same concerns that the Commission addressed in the equity markets when the Commission adopted Rule 610(c) of Regulation NMS to cap access fees in those markets.[2]

We are a firm believer in the power of free markets. In our view, free and fair competition generally serves investors better than prescriptive regulations. Regulation of fees, in particular, should be undertaken only in extraordinary circumstances.

Competitive forces, however, are not fully effective to combat excessive Taker Fees in the options markets because regulations limit competition for order flow in important ways. In many cases, rules that prohibit trade-throughs, rather than pure competitive forces, dictate how orders must be routed in the options markets. Regardless of one's view on the advisability of rules prohibiting trade-throughs, all of the options exchanges have such rules pursuant to the Options Intermarket Linkage Plan ("Linkage Plan"). As discussed below, rules limiting fees to obtain access to quotations are a necessary and logical consequence of rules prohibiting trade-throughs.

The Commission's consideration of these issues is particularly timely. The Commission is currently considering proposals from each of the options exchanges to replace the Linkage Plan with a new plan with trade through and locked and cross market provisions modeled on the same provisions in

[1] We submit this rulemaking petition pursuant to Rule 192 of the Commission's Rules of Practice.

[2] The Commission has the authority to adopt this or a similar rule pursuant to Section 11A of the Securities Exchange Act of 1934 ("Exchange Act") and, among other provisions, Section 11A(c)(1)(B) of that Act.

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Regulation NMS.[3] Because the Commission already is considering whether the options markets would benefit from key provisions of Regulation NMS, we hope the Commission will not delay its consideration of whether an access fee cap is such a provision.

I. **Overview**

Under a maker-taker fee structure, firms must pay a fee to execute against an exchange's quotations ("Taker Fees"), and firms who quote passively receive a rebate when their orders are executed ("Maker Rebates"). Taker Fees are analogous — if not identical — to access fees in the equity markets, which have been capped by Rule 610(c) of Regulation NMS. Indeed, Taker Fees in the options markets meet the operative portion of the definition used in Rule 610(c): fees for the execution of an order against a quotation.

Because several options exchanges recently have implemented maker-taker pricing for the first time, the Commission should adopt rules limiting Taker Fees in the options markets to address the same issues the Commission addressed by capping access fees in the equity markets. As developed more fully below, limits on fees charged to obtain access to quotations are a necessary consequence of rules that prohibit trade-throughs, regardless of whether the quotations are for shares of stock or for options contracts. Absent a reasonable limit on Taker Fees, maker-taker fee structures also encourage market participants to lock the market.

Commission action is necessary because several of the options exchanges are imposing excessive Taker Fees, with three exchanges imposing fees of nearly \$.50 per contract.[4] Limiting Taker Fees would

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[3] *See* File No. 4-546: Proposed Options Order Protection and Locked/Crossed Market Plan by Amex, BSE, CBOE, ISE, Nasdaq, NYSE Arca, and Phlx.

[4] Currently, three of the options exchanges employ a maker-taker pricing structure: the NASDAQ Options Market ("NASDAQ"), the Boston Options Exchange ("BOX"), and NYSE Arca Options ("Arca"). See Exchange Act Rel. No. 57599 (Apr. 1, 2008) (NASDAQ); Exchange Act Rels. No. 55223 (Feb. 1, 2007) and 57585 (Mar. 31, 2008) (Arca); and Exchange Act Rel. No. 57887 (May 30, 2008) (BOX). All of the exchanges' prices are on a per-contract basis. NASDAQ generally imposes a fee of \$.45 to remove orders resting on the NASDAQ Options book, and provides a rebate of \$.30 to those who provide passive resting orders on the NASDAQ Options book. Arca applies a maker-taker fee structure to all electronic executions in options contracts participating in the Penny Pilot Program. Generally, Arca's rebates for providing liquidity (resting quotes or orders that are filled) are as follows: \$.30 to market makers and lead market makers and \$.25 to customers, broker-dealers, and firms. Arca imposes a uniform Taker Fee of \$.45 to take liquidity. BOX applies a two-tiered maker-taker fee structure to all options classes participating in the Penny Pilot Program. With respect to Tier 1 securities, BOX provides rebates to market participants who add liquidity to the BOX Book as follows: \$.30 to market makers and \$.25 to firms and customers. BOX imposes a Taker Fee of \$.45 on all market participants taking liquidity in Tier 1 securities. With respect to Tier 2 securities, which include some of the most liquid and actively traded options on BOX (*e.g.*, QQQQ), BOX provides rebates to market participants who add liquidity to the BOX Book as follows: \$.15 to market makers and \$.10 to firms and customers. BOX imposes a Taker Fee of \$.30 on all market participants taking liquidity in Tier 2 securities. While other options exchanges impose a fee to remove liquidity in certain circumstances, they do not use a comprehensive maker-taker fee structure. Moreover, their fees to take liquidity are generally lower than the maker-taker exchanges (*e.g.*, the International Securities Exchange ("ISE") assesses an \$.18 fee to remove liquidity in certain circumstances; the Chicago Board Options Exchange also assesses an \$.18 fee to remove liquidity in certain circumstances). Of course, these fees to take liquidity are part of more comprehensive fee structures.